



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street, Boston 02204

October 4, 1984

You request a ruling as to the application of the room occupancy excise to commissions paid to your client ("Company"). You state that the Company operates a bed-and-breakfast reservation service. The Company matches visitors to Massachusetts with local hosts who will lodge the visitors in their homes as paying guests. The Company collects the charges from the visitors and sends them to the hosts after deducting a commission as payment for its services.

Chapter 64G, Section 3 of the General Laws imposes a five percent tax on the transfer of occupancy of any room or rooms in a hotel, lodging house, or motel in Massachusetts. In addition, Chapter 546, Section 22 of the Acts of 1969 imposed a surtax of fourteen percent of the tax imposed under Chapter 64G. The total room occupancy excise is thus 5.7 percent of the rent charged for occupancy. However, the room occupancy excise is not imposed if the total amount of rent charged is less than two dollars per day. (G.L. c. 64G, § 3).

Rent is defined as "the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever." (G.L. c. 64G, § 1(h)).

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A motel is defined as

any building or a portion of a building, other than a hotel or lodging house, in which persons are lodged for hire with or without meals and which is licensed or required to be licensed under the provisions of section thirty-two B of chapter one hundred and forty or is a private club. (G.L. c. 64G, § 1(c)).

Chapter 140, Section 32A further defines a motel as "any building or group of buildings which provides sleeping accommodations for transient motorists and which is not licensed as an inn." A bed-and-breakfast operation is a motel within the meaning of Chapter 64G, Section 1(c) and Chapter 140, Section 32A.

Any person conducting a bed-and-breakfast operation is required to obtain a license (G.L. c. 140, § 32A), but the failure to obtain a license does not exempt operators from the room occupancy excise. The room occupancy excise is imposed on rent for occupancy in motels licensed or required to be licensed. (See G.L. c. 64G, §§ 1(c), 3).

Each operator of a hotel, lodging house, or motel is required to register for the room occupancy excise. (G.L. c. 64G, § 6). An operator is defined as any person operating a hotel, lodging house, or motel. (G.L. c. 64G, § 1(d)). The operator is responsible for collecting the room occupancy excise from all occupants and paying the room occupancy excise to the Commissioner of the Department of Revenue. (G.L. c. 64G, § 3).

Chapter 64H, Section 2 imposes a five percent sales tax on retail sales of tangible personal property. The sales price subject to sales tax is the total amount paid as consideration. (G.L. c. 64H, § 1(14)).

Sales of meals served by restaurants are subject to the sales tax. A restaurant is defined in part as any eating establishment where food, food products, or beverages are provided and for which a charge is made. (G.L. c. 64H, § 6(h)).

Each vendor of tangible personal property, including meals, is required to register for the sales tax. (G.L. c. 64H, § 7). The vendor is responsible for collecting

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the sales tax from purchasers and paying the sales tax to the Commissioner of the Department of Revenue. (G.L. c. 64H, §§ 2, 3(a)).

Chapter 64H, Section 1(9)(d) includes in the definition of "retailer"

[e]very salesman, representative, peddler or canvasser who, in the opinion of the commissioner, it is necessary to regard for the efficient administration of this chapter as the agent of the dealer, distributor, supervisor or employer under whom he operates or from whom he obtains the tangible personal property sold by him. The commissioner may, in such cases, treat and regard such agent as the retailer jointly responsible with his principal, employer or supervisor for the collection and payment of the tax imposed by this chapter.

Based on the foregoing, it is ruled that:

1. The total charges made to paying guests for rent in bed-and-breakfast operations are subject to the room occupancy excise; the total charges made to paying guests for meals in bed-and-breakfast operations are subject to the sales tax. No deduction should be made from the charges for commissions paid to the Company or any other reservation service.

2. Each operator of a bed-and-breakfast operation is required to register with the Commissioner as an operator for the room occupancy excise and as a vendor for the sales tax. Each operator of a bed-and-breakfast operation must collect the room occupancy excise and the sales tax from paying guests and pay such taxes to the Commissioner.


3. Operators of bed-and-breakfast operations should apportion charges made to paying guests between charges for rent and charges for meals.

4. If the Company collects the total charges for rent and meals from paying guests of bed-and-breakfast operations on behalf of the operators, the Company should also collect room occupancy excise and sales tax from the guests and remit the collected taxes to the operators of the bed-and-breakfasts who must pay the taxes to the Commissioner.

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5. The Company is not an operator as defined in Chapter 64G and is not a vendor as defined in Chapter 64H. The Company need not register as an operator or a vendor.

Very truly yours,


Commissioner of Revenue

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